

DEPARTMENT OF STATE REVENUE

29970515.LOF

LETTER OF FINDINGS NUMBER: 97-0515 CG
Revocation of Charity Gaming Qualification Application

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Charity Gaming - Qualified Organization

Authority: IC 4-32-6-20(1)(C); IC 6-8.1-5-1; 45 IAC 18-2-1; Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind. App. 5 Dist. 1993).

The taxpayer protests the Department's revocation of its qualification application.

II. Charity Gaming - Application By Qualified Organization

Authority: IC 4-32-9-4; 45 IAC 18-2-1

The taxpayer protests the Department's revocation of its qualification application.

STATEMENT OF FACTS

The taxpayer was incorporated under the laws of the State of Indiana on July 24, 1991, and then dissolved on November 21, 1991. The taxpayer was incorporated again on September 5, 1995. See Department's exhibit A. On September 3, 1997, the Department revoked the taxpayer's status to conduct charitable gaming in the State of Indiana. See Department's exhibit B. The Department's revocation was the result of an investigation conducted by the Department's criminal investigation division. The taxpayer protested the Department's decision on September 9, 1997.

In addition, the taxpayer applied for a raffle license, and paid twenty-five dollars (\$25) for the proposed March 17, 1997 event.

Additional information will be provided as necessary.

I. Charity Gaming - Qualified Organization

DISCUSSION

The taxpayer protests the Department's revocation of the taxpayer's qualification application for an Indiana Charity Gaming License based upon the Department's determination that the taxpayer had not been in continuous existence for at least five years pursuant to IC 4-32-6-20(1)(c). The taxpayer contends that it had been in existence for at least five (5) years at the time their application was filed.

45 IAC 18-2-1 states:

(a) To obtain a license to operate an allowable event, a qualified organization must submit a written application on a form prescribed by the department.

(b) The application shall include the following information:

* * *

(6) Sufficient facts for the department to determine that the organization is a qualified organization, including, but not limited to, the following:

(C) **Proof that the organization has been in existence for five (5) or more years.**

(Emphasis added).

The Department's witness stated under oath, that according to the Department's investigation, the taxpayer has not been in existence for the required five (5) years. The taxpayer failed to attend the hearing (numerous letters were written with no response), so no other documentation other than the CG-1 is available to support the taxpayer's protest. The taxpayer filed with its CG-1 the following documentation:

Letter to Indiana Department of Revenue Charity Gaming Section

Indiana Department of Revenue Power of Attorney

Question 7 Additional Organization Information

Question 8 & 11 Operator and Worker Information

Copy of Federal 501(c) Status Letter

Copy of Indiana Department of Revenue Not-for-Profit Tax Registration Certificate

Copy of current Certificate of Incorporation at 09/05/95

Copy of current Articles of Incorporation at 09/05/95

Copy of amended Articles of Association at 10/08/91

Copy of original Certificate of Incorporation at 07/24/91

Copy of original Articles of Incorporation at 07/24/91
Copy of original Articles of Association at 12/18/90
Copy of current Organizations' By-Laws at 09/05/95
Copy of amended Organizations' By-Laws at 10/08/91
Copy of original Organizations' By-Laws at 07/24/91
Copy of original Organizations' By-Laws at 12/18/90
Current membership list
Letters of appreciation
1991-1996 Annual membership update
Organizations receipts for 5½ years.

It appears from the documentation submitted with the taxpayer's CG-1 that the organization was originally incorporated on July 24, 1991. The taxpayer failed to inform the Department that they dissolved their corporation on November 21, 1991. The taxpayer in a statement detailing additional organization information states that the original organization was an association. The taxpayer attached to their application, amended articles of association signed by the organizers of the association on October 8, 1991, and notarized by a Thomas Q who lists his commission expiration date as February 6, 1998. Unfortunately, the taxpayer did not realize that a notary's commission is only valid for four (4) years. Mr. Q notarized the document in question right below a statement which states, "In Witness and Subscribed and sworn to before me this 8th day of October 1991". It is impossible for a document allegedly signed in 1991 to be notarized by someone whose commission expiration date is in 1998. The document cannot be valid. The taxpayer's failure to appear at the hearing and explain the discrepancies leads the Department to question the remainder of the documents submitted with the CG-1.

Indiana Code section 4-32-6-20 states that the organization must be "operating". The Department gives this word its ordinary and plain meaning. Operating is defined by Webster's Dictionary as, "adj. of, relating to, or used for or in operations." The word "operate" means, "1 : to bring about: EFFECT 2 a : to cause to function : WORK b : to put or keep in operation..." Webster's New Collegiate Dictionary (1979). According to the Department's witnesses, the taxpayer had not been continuously operating for a period of five years as is required.

The information submitted by the taxpayer states that it was affiliated with a national organization. Pursuant to IC 4-32-6-20 a qualified organization means a bona fide religious, educational, senior citizen, veterans, or civic organization operating in Indiana that:

- (A) operates without profit to the organization's members;
 - (B) is exempt from:
 - (i) taxation under Section 501 of the Internal Revenue Code...
- and...

has been continuously in existence for at least five (5) years or is **affiliated with an Indiana parent organization that has been in existence for at least five (5) years** ... (Emphasis added.)

The Department must determine whether or not the national organization has been in continuous existence for at least five years. The taxpayer failed to provide the Department with any documentation that its national organization existed for at least five years.

According to page three of the Department's form CG-1, the relevant facts in determining continuous existence could include a combination of the following items:

- Indiana Forms IT-35 AR and IT-20NP;
- Federal Form 990 and/or 990T if applicable;
- minutes of meetings;
- bank statements;
- dated newspaper articles;
- any type of dated state or local licensing permits, such as alcoholic beverage licenses and registration with the Secretary of State's office;
- account payables, including copies of dated invoices;
- account receivables, including copies of dated invoices;
- utility bills;
- dated leases;
- canceled checks (representing each of the five years);
- bylaws that are dated;
- dated articles of incorporation;
- affidavits or letters of confirmation from the national or parent organization on organization letterhead; and
- descriptions and results of fund-raising activities for the last five years.

The taxpayer failed to attend the hearing and thus did not provide any of the above referenced documentation. The taxpayer was unable to prove that it or its parent organization was organized and in existence for five years. The evidence presented during the hearing shows that the taxpayer was formally organized on July 24, 1991 and then dissolved in November of 1991. There was no explanation as to what took place between then and September of 1995. The taxpayer did not provide any documentation or evidence to prove that it was operating between 1991 and 1995. Therefore, the Department finds that the taxpayer was not operating for the requisite period as provided by Indiana law. Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim that the entity does not qualify for a license is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993). In this instance the taxpayer failed to attend the hearing and therefore, did not meet its burden of proof. The taxpayer's protest is respectfully denied.

FINDING

The taxpayer's protest is denied.

II. Charity Gaming - Application By Qualified Organization

DISCUSSION

The taxpayer protests the Department's revocation of its qualification application. The Department's denial was based upon insufficient facts in the taxpayer's application. Pursuant to IC 4-32-9-4 and 45 IAC 18-2-1, the taxpayer must provide the names of proposed operators and sufficient facts to enable the Department to determine whether the proposed operators are qualified to serve as operators. The Department's witness stated that the addresses given for the proposed operators were misleading and incorrect. The list of operators contains the name of a Mr. B (Vice President/Director) and gives an address which according to the United States Postal Service does not exist. The President and Secretary/Treasurer who are also listed as operators have the same address which may not be out of the ordinary except for the fact that at least three other apparently unrelated individuals are listed with the same residential address. One address given for a member was a post office box. The Department also interviewed two alleged members of the taxpayer's organization (they were listed on the membership list submitted with the CG-1). The two members Mr. S and Mr. C stated in sworn affidavits that they are not current members, nor have they ever been members of the taxpayer's organization. See Department's exhibits E and F. Likewise, the taxpayer was not exempt from taxation under Section 501 of the Internal Revenue Code for a period of five years as is required by IC 4-32-6-20(a)(1)(B)(i).

The taxpayer failed to attend the hearing and did not provide any additional documentation. Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993). In this instance the taxpayer failed to attend the hearing and therefore, did not meet its burden of proof. The taxpayer's protest is respectfully denied.

FINDING

The taxpayer's protest is denied.